

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 243 of 1987

FIRST APPEAL No 244 of 1987

with

FIRST APPEAL No 245 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

KANBI KUBERBHAI MORARBHAI

Versus

STATE OF GUJARAT

Appearance:

MR V.K. JOSHI for Appellants

MR R.C. KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 20/09/1999

ORAL JUDGEMENT : [Per : Kadri, J.)

1. The appellants - original claimants have filed

these Appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") read with Section 96 of the Code of Civil Procedure, challenging the common judgment and Award dated December 31, 1985, passed by the learned Assistant Judge, Panchmahals, Godhra, in Land Acquisition Reference Nos. 7 of 1982, 8 of 1982 and 9 of 1982.

2. The State of Gujarat intended to construct a dam over Machhan River and for that purpose intended to acquire lands situated at village - Raniyar, Taluka Zalod, District Panchmahals. The Notification under Section 4(1) of the Act was published in the Government Gazette on August 21, 1975. The persons interested had filed their objections before the Land Acquisition Officer. The Land Acquisition Officer had, after considering the objections, filed his report under Section 5-A(2) of the Act before the State Government. After the scrutiny of the report of the Land Acquisition Officer, the State Government issued Notification under Section 6 of the Act, which was published in the Government Gazette on April, 1977.

3. The persons interested in the acquired lands, filed their claim before the Land Acquisition Officer, claiming compensation at the rate of Rs.20,000/- per acre for Kyari lands, Rs. 15,000/- per acre for Jirayat lands and Rs. 5,000/- per acre for waste land. The Land Acquisition Officer, on the basis of the material placed before him, made his Award on March 8, 1982 and offered compensation for the acquired lands at the rate of Rs.4,800/- per acre for Kyari lands, Rs. 3,200/- per acre for Jiyarat lands and Rs.40/- per acre for waste lands. The appellants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. They, therefore, filed the written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court. Hence, the above said applications were

referred to the District Court by the Land Acquisition Officer, which came to be numbered as Land Acquisition Reference Case Nos. 7 of 1982, 8 of 1982 and 9 of 1982.

4. The appellants to substantiate their claim of enhancement in compensation, examined (I) Vinodbhai Khembhai Patel - Exh. 23, (II) Nathabhai Parshottambhai Patel - Exh.24, (III) Vallabhbhai Dayalji - Exh. 29 and (IV) Punjabhai Khimabhai - Exh.31. The appellants also produced documentary evidence in the nature of sale transactions at Exhibits 27, 28 and 34. The respondent

did not lead any oral or documentary evidence before the Reference Court. The Reference Court, on the over all appreciation of oral as well as documentary evidence produced before it, determined the market value of the acquired lands of the appellants at the rate of Rs.190/- per Are for kyari lands and jirayat lands, Rs.140/- per Are for non-irrigated lands and Rs.100/- per Are for waste lands. The Reference Court has also awarded solatium at the rate of 15% on the additional amount of compensation with interest at the rate of 4% on the additional amount of compensation from the date of taking over of the possession of the acquired lands till the payment is made, which is given rise to the filing of these Appeals by the original claimants.

5. The learned counsel for the appellants Mr. V.K. Joshi has vehemently submitted that the compensation determined by the Reference Court is inadequate and the Reference Court had erred in not taking into

consideration the sale deeds produced by the appellants. Learned counsel for the appellants has further contended that the amended provisions of Sections 23 and 28 of the Act came into force from September 24, 1984 and, therefore, the claimants were entitled to solatium at the rate of 30% with interest at the rate of 9% for the first year and interest at the rate of 15%, if the amount of compensation was not paid within one year.

6. The learned Assistant Government Pleader Mr. R.C. Kodekar, on behalf of the respondent, vehemently submitted that just and reasonable compensation had been awarded by the Reference Court to the claimants and the claimants were not entitled to solatium at the rate of 30% and interest as per the amended provisions of Sections 23 and 28 of the Act and, therefore, the appeals deserve to be dismissed.

7. We have been taken through the entire evidence produced before the Reference Court. In our opinion, the Reference Court had not erred in determining the compensation at the rate of Rs. 190/- per Are for Kyari and Jirayat lands, Rs.140/- per Are for non-irrigated lands and Rs. 100/- per Are for waste lands. The Reference Court had carefully considered the sale deed produced before it and had adequately compensated the claims for the acquired lands. In our opinion, the market value of the acquired lands determined by the Reference Court is just and reasonable and it does not call for any interference by this Court.

8. The submissions of the learned Counsel for the appellants that the claimants are entitled to solatium at the rate of 30%, in view of the amended provision of Section 23(2) of the Act and in view of the the reported decisions in the case of K.S. PARI POORNAN vs. STATE OF KERALA, reported in 1995 SC 581 and in the case of UNION OF INDIA vs. RAGHUBIR SINGH, reported in 1989 sc 1993, deserve to be accepted. Section 23(2) of the Act reads as under :

"In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value in consideration of the compulsory nature of acquisition."

9. The amended provision of Section 23(2) of the Act came into force on September 24, 1984. The Reference Court had passed the Award on December 31, 1985 i.e. after coming into force of the amended provision of Section 23(2) of the Act. Therefore, in our opinion, the claimants would be entitled to solatium at the rate of 30% on the additional amount of compensation. The claimants shall also be entitled to interest at the rate of 9% per annum on the additional amount of compensation from the date of taking over of the possession till the payment is made. If the payment is not made within one year of the Award, then, there shall be interest at the rate of 15% for the subsequent period till the payment is

made in the Court. With this modification, the Appeals are partly allowed with no order as to costs. The common Award dated 31st December, 1985 stands modified accordingly to the aforesaid extent only.

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